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FILED

MAR 18 2016

Clerk, U S. District Court
District Of Montana
Billings

**ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. FX DRILLING COMPANY, INC., and QUAY GEZA TOROK, Defendants.	CR 16-20 -GF-BMM INDICTMENT NEGLIGENT DISCHARGE OF OIL INTO WATERS OF THE UNITED STATES IN A QUANTITY THAT MAY BE HARMFUL (Count I) Title 33 U.S.C. §§ 1321(b)(3), 1319(c)(1)(A); 18 U.S.C. § 2 (Penalty: Imprisonment for not more than one year, fine of not less than \$2,500 nor more than \$25,000 per day of violation, and not more than one year supervised release)
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FAILURE TO IMMEDIATELY NOTIFY APPROPRIATE FEDERAL AGENCY OF DISCHARGE OF OIL INTO WATERS OF THE UNITED STATES IN A QUANTITY THAT MAY BE HARMFUL (Count II)

**Title 33 U.S.C. §§ 1321(b)(5); 18 U.S.C. § 2
(Penalty: Imprisonment for not more than five years, a fine in accordance with Title 18, and not more than three years supervised release)**

THE GRAND JURY CHARGES:

1. Defendant FX DRILLING COMPANY, INC. (“FX DRILLING”) was a Nevada corporation engaged in the operation of oil well production facilities in an oil production field known as the South West Cut Bank Sand Unit (“Sand Unit”), located in Glacier County, Montana, on Indian country lands within the boundaries of the Blackfeet Indian Reservation.
2. FX DRILLING is closely related to a sister company, FX Producing Company, Inc. (“FX Producing”), a Nevada corporation, that owns the oil well production facilities operated by FX DRILLING. The Parent company of FX DRILLING and FX Producing is FX Energy, Inc., a Nevada corporation located in Salt Lake City, Utah.
3. Defendant QUAY GEZA TOROK was a Field Supervisor for FX DRILLING.
4. L.B. (name withheld to protect privacy) was General Manager for FX DRILLING, and was defendant QUAY GEZA TOROK’s direct supervisor.

The Negligent Discharge of Oil into Waters of the United States

5. On the morning of June 12, 2011, defendant QUAY GEZA TOROK discovered that an underground flow line containing oil well production fluids from Well Nos. 13-4 and 22-2 in the Sand Unit oil field had ruptured, causing oil well production fluids to be discharged from the underground flow line to the land surface, where the oil was observed to be flowing down a naturally sloping landscape.

6. Defendant QUAY GEZA TOROK, as FX DRILLING Field Supervisor, reported the discovery of the ruptured flow line to his supervisor, L.B., and conducted and directed repairs to the ruptured flow line. Defendants FX DRILLING and QUAY GEZA TOROK failed to exercise reasonable care to expeditiously control the discharged oil that defendant QUAY GEA TOROK and other FX DRILLING staff had observed flowing down the sloping landscape, and failed to promptly remove or initiate actions to stabilize and remediate the oil discharge accumulations to prevent the oil from reaching waters of the United States in a quantities that may be harmful.

7. Between June 12, 2011 and July 11, 2011, the negligence of defendants QUAY GEZA TOROK and FX DRILLING caused the uncontrolled discharge of oil from the ruptured flow line to travel approximately three-quarters of a mile down the sloping landscape, into a natural coulee drainage, and into an unnamed tributary and adjacent wetlands that flow to Cut Bank Creek.

8. On or about June 16, 2011, a local kayaker observed oil flowing into the inlet of Cut Bank Creek from the coulee drainage. He reported his observation to the Glacier County Sheriff's Office.

9. On or about July 9, 2011, a local rancher observed the oil discharge in the unnamed tributary and adjacent wetlands drainage, and leading up to Cut Bank Creek.

10. On or about July 11, 2011, the local rancher reported his observation of the oil discharge to tribal authorities with the Blackfeet Environmental Office.

Failure to Report the Discharge of Oil into Waters of the United States

11. On or about July 12, 2011, Blackfeet Environmental Office officials responded to the site of the reported oil spill, and observed a film or sheen of oil upon the surface of the unnamed tributary and Cut Bank Creek, and oil sludge or emulsion beneath the surface of the water on the unnamed tributary and on the adjacent shorelines of the unnamed tributary and Cut Bank Creek.

12. On or about July 12, 2011, Blackfeet Environmental Office officials discussed their observations with defendant QUAY GEZA TOROK at the scene of the oil discharge, and directed defendants QUAY GEZA TOROK and FX DRILLING to call the National Response Center toll-free 1-800 number as required when oil is discharged to waters of the United States in harmful quantities.

13. From on or about July 12, 2011 to July 13, 2011, defendants FX DRILLING and QUAY GEZA TOROK failed to immediately notify the National

Response Center of the discharge of oil to waters of the United States in quantities that may be harmful as directed by the tribal authorities.

14. On or about July 13, 2011, Blackfeet Environmental Office authorities contacted the National Response Center themselves, after determining that defendants FX DRILLING and QUAY GEZA TOROK had not reported the oil discharge as directed.

The Clean Water Act, as Amended by the Oil Pollution Act of 1990

15. The Clean Water Act prohibits the negligent discharge of oil in harmful quantities into a navigable water of the United States or upon adjoining shorelines. 33 U.S.C. §§ 1319(c)(1)(A), 1321(b)(3).

16. The unnamed tributary is a tributary to Cut Bank Creek. The unnamed tributary and abutting wetlands have a hydrologic connection to Cut Bank Creek approximately 600 linear feet upstream from its confluence with Cut Bank Creek. Cut Bank Creek is a tributary to the Marias River, a traditional navigable water. The unnamed tributary, wetlands abutting the unnamed tributary, Cut Bank Creek, and the Marias River are “waters of the United States.” 33 U.S.C. § 1321(b)(3); 40 C.F.R. §110.1

17. The Clean Water Act requires that any person in charge of any onshore facility shall, as soon as he or she has knowledge of any discharge of oil in harmful quantities into a water of the United States or upon adjoining shorelines, must

immediately notify the appropriate agency of the United States of such a discharge. 33 U.S.C. § 1321(b)(5); 40 C.F.R. § 110.6.

18. The Coast Guard's National Response Center in Washington, D.C., is the governmental agency that must be notified immediately in the event of a discharge of a harmful quantity of oil into navigable waters, and it has established a toll-free 1-800 telephone number to be used for such notifications. 40 C.F.R. § 110.6.

19. The failure to immediately notify the National Response Center of a discharge from an onshore facility of a harmful quantity of oil into navigable waters of the United States is a crime. 33 U.S.C. § 1321(b)(5).

COUNT I

Paragraphs 1 through 19 are realleged and incorporated here by reference.

20. Between and on or about June 12, 2011 and July 12, 2011, in Glacier County, within the State and District of Montana, the defendants, FX DRILLING COMPANY, INC. and QUAY GEZA TOROK, negligently discharged and negligently caused to be discharged a harmful quantity of oil into a water of the United States and adjoining shorelines, in violation of 33 U.S.C §§ 1321(b)(3) and 1319(c)(1)(A), and 18 U.S. C. § 2.

COUNT II

Paragraphs 1 through 19 are realleged and incorporated here by reference.

21. Between and on or about July 12, 2011 and July 13, 2011, in Glacier County, within the State and District of Montana, the defendants, FX DRILLING

COMPANY, INC. and QUAY GEZA TOROK, persons in charge of an onshore facility from which oil was discharged in a quantity which may be harmful into a navigable water of the United States, failed to immediately notify and caused the failure to immediately notify the appropriate agency of the United States government as soon as they had knowledge of the discharge, in violation of 33 U.S.C. § 1321(b)(5) and 18 U.S.C. § 2.

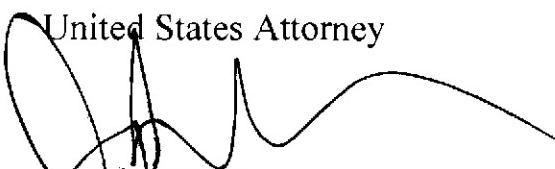
A TRUE BILL.

Foreperson signature redacted. Original document filed under seal.



MICHAEL W. COTTER

United States Attorney



JOSEPH E. THAGGARD

Criminal Chief Assistant U.S. Attorney

Crim. Summons X The April 19th
Warrant: _____
Bail: _____